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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 141219999-6207-02]

RIN 0648-XD681

Endangered and Threatened Wildlife and Plants; Final Rule to List the Tanzanian DPS of African Coelacanth (*Latimeria chalumnae*) as Threatened under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final rule to list the Tanzanian Distinct Population Segment (DPS) of African coelacanth (*Latimeria chalumnae*) as a threatened species under the Endangered Species Act (ESA). We will not designate critical habitat for this species because the geographical areas occupied by the species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are essential to the conservation of the species.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NMFS, Office of Protected Resources, (301) 427-8491.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species as threatened or endangered under the Endangered Species Act (ESA). We found that the petitioned actions may be warranted for 27 of the 81 species, including the African coelacanth, and announced the initiation of status reviews for each of the 27 species (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). Following the positive 90-day finding, we conducted a comprehensive status review of the African coelacanth. A “status review report” (Whittaker, 2014) was produced and used as the basis of 12-month finding determination and proposed rule. Please refer to our website

(<http://www.nmfs.noaa.gov/pr/species/fish/coelacanth.html>) for access to the status review report, which details African coelacanth biology, ecology, and habitat, the DPS determination, past, present, and future potential risk factors, and overall extinction risk. On March 03, 2015, we published a proposed rule to list the Tanzanian DPS of African coelacanth (*L. chalumnae*) as a threatened species (80 FR 11363) and solicited comments from all interested parties including the public, other governmental agencies, the scientific community, industry, and environmental groups.

ESA Statutory Provisions, Regulations, and Policy Considerations

As the designee of the Secretary of Commerce, we are responsible for determining

whether marine and anadromous species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we consider first whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. 1532(16).

Section 3 of the ESA also defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. 1632(6); (20). We interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the “foreseeable future” (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). The duration of the “foreseeable future” in any circumstance is inherently fact-specific and depends on the particular kinds of threats, the life-history characteristics, and the specific habitat requirements for the species under consideration. The foreseeable future also considers the availability of data, the ability to predict particular threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of

years. Further, the existence of a threat to a species and the species' response to that threat are not, in general, equally predictable or foreseeable. Hence, in some cases, the ability to foresee a threat to a species is greater than the ability to foresee the species' exact response, or the timeframe of such a response, to that threat. In making a listing determination, we must ask whether the species' population response to a threat (i.e., abundance, productivity, spatial distribution, diversity) is foreseeable, not merely whether the emergence or continuation of a threat is foreseeable. Because we are obligated to base our determinations on the best available scientific and commercial information, the foreseeable future extends only as far as we are able to reliably predict the species' population response to a particular threat.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following threat factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. 16 U.S.C. 1533(a)(1). We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation (or subdivision thereof) to protect the species. 16 U.S.C. 1533(b)(1)(A).

Pursuant to the ESA, any interested person may petition to list or delist a species, subspecies, or DPS of a vertebrate species that interbreeds when mature (5 U.S.C. 553(e), 16 U.S.C. 1533(b)(3)(A)). ESA-implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (FWS) also establish procedures for receiving and considering petitions to

revise the lists of endangered and threatened species and for conducting periodic reviews of listed species (50 CFR 424.01).

When we receive a petition to list a species, we are required to the maximum extent practicable to make a finding within 90 days as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The ESA-implementing regulations provide that “substantial information” is that amount of information that would lead a reasonable person to believe that listing may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists, we take into account several factors, in light of any information noted in the petition or otherwise readily available in our files. If a positive finding is made at that initial stage, then we commence a status review in order to assemble and assess the best available scientific and commercial information. 16 U.S.C. 1533(b)(3)(A). After conducting the status review and within 12 months of receiving the petition, we must prepare a finding that the action is not warranted, warranted, or warranted but precluded by higher listing priorities. 16 U.S.C. 1533(b)(3)(B). If we find that the petitioned action is warranted, we promptly publish a proposed rule to list the species, take steps to notify affected states and foreign governments, and solicit public input. 16 U.S.C. 1533(b)(3)(B)(ii); 16 U.S.C. 1533(b)(5). After reviewing additional information received during the comment period, we must either publish a final regulation to implement the determination or take certain other actions. 16 U.S.C. 1533(b)(6).

In making a final listing determination, we first determine whether a petitioned species meets the ESA definition of a “species.” This term includes taxonomic species, subspecies, and “distinct population segment of any species of vertebrate fish or wildlife which interbreeds when

mature.” 16 U.S.C. 1532(16). On February 7, 1996, the Services adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS Policy identified two elements that must be considered when identifying a DPS: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance is then considered in light of Congressional guidance (see S. Rep. No. 96-151(1979)) that the authority to list DPSs be used “sparingly” while encouraging the conservation of genetic diversity. This consideration may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

After determining whether a group of organisms constitutes a listable “species,” then using the best available information gathered during the status review for the species, we complete a status and extinction risk assessment to determine whether the species qualifies as an endangered species or threatened species. In assessing extinction risk, we consider the demographic viability factors developed by McElhany *et al.* (2000) and the risk matrix approach developed by Wainwright and Kope (1999) to organize and summarize extinction risk considerations. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped hammerhead sharks, and black abalone (see <http://www.nmfs.noaa.gov/pr/species/> for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk. Against this backdrop we evaluate the influence of the Section 4(a)(1) threat factors.

As the definition of “endangered species” and “threatened species” makes clear, the determination of extinction risk can be based on either assessment of the range wide status of the species, or the status of the species in a “significant portion of its range.” NMFS and FWS recently published a final policy to clarify the interpretation of the phrase “significant portion of the range” in the ESA definitions of “threatened species” and “endangered species” (79 FR 37577; July 1, 2014) (SPR Policy). The SPR Policy reads:

Consequences of a species being endangered or threatened throughout a significant portion of its range: The phrase “significant portion of its range” in the Act’s definitions of “endangered species” and “threatened species” provides an independent basis for listing. Thus, there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range or a species may be endangered or threatened throughout only a significant portion of its range.

If a species is found to be endangered or threatened throughout only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act’s protections apply to all individuals of the species wherever found.

Significant: A portion of the range of a species is “significant” if the species is not currently endangered or threatened throughout its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

Range: The range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (*e.g.*, seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute a significant portion of a species' range.

Reconciling SPR with DPS authority: If the species is endangered or threatened throughout a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Final Policy explains that it is necessary to fully evaluate a portion for potential listing under the "significant portion of its range" authority only if the species is not found to warrant listing rangewide and if substantial information indicates that the members of the species in a particular area are likely *both* to meet the test for biological significance *and* to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed:

To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout

a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. 79 FR 37586.

After reviewing the best available information as to the species status and threats throughout its range (and, if necessary, in a significant portion of its range), we then assess efforts being made to protect the species, to determine if these conservation efforts are adequate to mitigate the existing threats as required under Section 4(b)(1)(A), and whether they are likely improving the status of the species to the point at which listing is not warranted, or contribute to forming the basis for listing a species as threatened rather than endangered. Finally, we re-assess the extinction risk of the species in light of the existing conservation efforts, as necessary and come to a final conclusion as to whether the species qualifies as an endangered or threatened species.

Summary of Comments Received

Below we address comments received pertaining to the proposed listing of the Tanzanian DPS of African coelacanth in the March 3, 2015, proposed rule (80 FR 11363). During the 60-day public comment period from March 3, 2015, to May 4, 2015, we received a total of 8 written comments from individuals. Each of the commenters generally supported the proposed listing.

Comment 1: We received eight comments in general support of the proposed listing. Commenters agreed with the proposal to list the species as threatened. They cited its rarity and current threats from fishing and habitat impacts as reasons why the Tanzanian DPS of African coelacanth warrants protection under the ESA. One commenter noted that ESA listing status would help raise awareness of the species' plight and authorize the United States to fund and assist in conservation programs.

Response: We appreciate these comments as they support the proposed listing rule for the Tanzanian DPS of African coelacanth as a threatened species under the ESA. We also agree that the species' listing status as threatened could help raise conservation awareness for the species. However, we emphasize that our listing determination is based solely on consideration of the best scientific and commercial information available regarding the threats facing this species as required under Section 4(b)(1)(A) and discussed in the proposed rule.

Comment 2: One commenter noted that they would prefer all populations of coelacanth be listed under the ESA, but did not provide any additional information to support listing any other populations. In contrast, the commenter pointed out that great progress has been made regarding educational outreach of Comoran fishermen on how to avoid incidental catch of coelacanths, and also noted that coelacanth habitat in the Comoros Islands is currently stable.

Response: As detailed in the proposed listing rule and explained further below in our Final Determination section, we conducted a status review of the African coelacanth and first considered whether the species was at risk of extinction throughout its range and found that threats to the species across its range are generally low, with isolated threats of overutilization and habitat loss concentrated in the Tanzanian portion of the range. Thus, we determined on the basis of the best available scientific and commercial information that there was no basis to list the species overall based on an assessment of its status throughout its range. However, applying our SPR Policy and DPS Policy, we concluded that the Tanzanian DPS was a listable entity and that it met the test for a threatened species. Because the population is a valid DPS, our SPR Policy directs that the members of that population be listed rather than the species at large. We thus proposed to list only the Tanzanian DPS as a threatened species. Because the commenter

provided no information to indicate that we should reconsider these findings, we cannot adopt their suggestion to list the entire species.

Status Review

The status review for the African coelacanth addressed in this finding was conducted in 2014 (Whittaker, 2014). The status review represents the best available scientific and commercial information on the species' biology, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. We also considered information submitted by the public and peer reviewers. This information is available in the status review report (Whittaker, 2014), which is available on our website (<http://www.nmfs.noaa.gov/pr/species/fish/coelacanth.html>). The status review report provides a thorough discussion of life history, demographic risks, and threats to the particular species. We considered all identified threats, both individually and cumulatively, to determine whether the species responds in a way that causes actual impacts at the species level. The collective condition of individual populations was also considered at the species level, according to the four demographic viability factors discussed above.

The proposed rule (80 FR 11363, March 3, 2015) summarizes general background information on the species' natural history, range, reproduction, population structure, distribution and abundance. None of this information has changed since the proposed rule, and we received no new information through the public comment period that would cause us to reconsider our previous finding as reflected in the 12-month finding and proposed rule. Thus, all of the information contained in the status review report and proposed rule is reaffirmed in this final action.

Overview of Determination Regarding the African Coelacanth at the Species Level

Based on the best available scientific and commercial information described in the status review report and proposed rule, in developing our 12-month finding we determined that the African coelacanth is taxonomically distinct from the Indonesian coelacanth, *Latimeria menadoensis*, and is a valid species under the ESA; it meets the definition of “species” pursuant to section 3 of the ESA and is eligible for listing under the ESA. Next we considered whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA contribute to the extinction risk of the African coelacanth species and went on to evaluate the species’ level of extinction risk. Finally we considered conservation efforts for the species overall as required under Section 4(b)(1)(A).

We received no information or analysis from public comment on the proposed rule that would cause us to reconsider any of our analysis or conclusions regarding any of the section 4(a)(1) factors or their interactions for the species overall. Likewise, we did not receive any new information or analysis that would cause us to reconsider our analysis of extinction risk. Finally, we did not receive any new information regarding conservation efforts, which we evaluated as required under Section 4(b)(1)(A). For this final rule, we clarify that we do not apply the particularized rubric of the Policy on the Evaluation of Conservation Efforts (PECE Policy, 68 FR 15100, March 28, 2003) to consideration of foreign conservation efforts, because that policy applies only to conservation efforts “identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.” Nevertheless, in this case we have substantively evaluated the likelihood of implementation and efficacy of

relevant efforts, including specifically the recently established Tanga Coelacanth Marine Park and its associated protections, as described in the proposed rule. We therefore reaffirm the substance of our discussion of the 4(a)(1) factors, extinction risk, and conservation efforts from the 12-month finding and proposed rule (80 FR 11363, March 03, 2015) in this final action. In summary, after considering the status, threats and extinction risk for the African coelacanth (*L. chalumnae*), we determined the species does not meet the definition of a threatened or endangered species when evaluated throughout all of its range. Thus, we did not propose to list the species overall. We received no information or analysis through the comment process that would cause us to reevaluate our determination that the African coelacanth does not warrant listing rangewide.

Final Determination

We have reviewed the best available scientific and commercial information, including the petition, the information in the status review reports, public comments, and the comments of peer reviewers. Based on the information presented, and as described in the proposed listing rule, because we found the African coelacanth species overall to not warrant listing on the basis of the range wide analysis, we applied the SPR Policy and considered whether any portions of the range of the species would be likely to be both significant to the species and at risk of extinction now or within the foreseeable future. We considered first whether any populations faced an unusual concentration of threats that might suggest they were at risk of extinction. After a review of the best available information, we identified the Tanzanian population of the African coelacanth as a population facing concentrated threats because of increased catch rates in this region since 2003, and the threat of a deep-water port directly impacting coelacanth habitat in

this region. Due to these concentrated threats, we found that the species may be at risk of extinction in this area, so next we determined whether this portion of the range of the species could be considered significant under the SPR Policy (79 FR 37577; July 1, 2014).

The Tanzanian population is one of only three confirmed populations of the African coelacanth, all considered to be small and isolated. Because all three populations are isolated, the loss of one would not directly impact the other remaining populations. However, loss of any one of the three known African coelacanth populations would significantly increase the extinction risk of the species as a whole, as only two small populations would remain, making them more vulnerable to catastrophic events such as storms, disease, or temperature anomalies. Therefore, we determined that this portion of the range of the species (the Tanzanian population) represents a significant portion of the range of the African coelacanth.

Having found that the members of the Tanzanian population constituted a significant portion of the species' range, we next evaluated the extinction risk of this significant portion of the range to determine whether it was threatened or endangered. After reviewing the best available scientific and commercial information, we determined that the Tanzanian population faces demographic risks, such as population isolation and low productivity, which make it likely to be influenced by stochastic or depensatory processes throughout its range. Additionally, ongoing or future threats include overutilization via bycatch in the Tanzanian gillnet shark fishery, as well as habitat destruction as a result of coastal development. The species' natural biological vulnerability to overexploitation exacerbates the severity of these threats and places the population at an increased risk of extinction within the foreseeable future. In our consideration of the foreseeable future, we evaluated how far into the future we could reliably

predict the operation of the major threats to this population, as well as the population's response to those threats. We are confident in our ability to make projections over the next several decades in assessing the threats of overutilization and habitat destruction, and their interaction with the life history of the coelacanth, with its lifespan of 40 or more years. Based on this information, we find that the Tanzanian population is at a moderate risk of extinction within the foreseeable future. Therefore, we consider the Tanzanian population to be threatened.

Because the Tanzanian population represents a significant portion of the range of the species, and this population is threatened, we conclude that the African coelacanth is threatened in a significant portion of its range. We next applied the provision from the SPR Policy providing that if a species is determined to be threatened or endangered across a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies. In evaluating whether this population qualified as a DPS under the DPS Policy (61 FR 4722; February 7, 1996), we determined that the Tanzanian population is discrete based on evidence for its genetic and geographic isolation from the rest of the taxon. The population also meets the significance criterion set forth by the DPS policy, as its loss would constitute a significant gap in the taxon's range. Because it is both discrete and significant to the taxon as a whole, we identified the Tanzanian population as a valid DPS.

Finally, because the population in the significant portion of the range is a valid DPS, we proposed to list the DPS rather than the entire taxonomic species or subspecies. We received no information or analysis through the public comment process that would cause us to reconsider our determination. Therefore, with this final rule we are listing the Tanzanian DPS of the African

coelacanth as a threatened species under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); concurrent designation of critical habitat for species that occur within the United States, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and, for endangered species, certain prohibitions including against “take” of the species by persons subject to United States jurisdiction (16 U.S.C. 1538(a)(1)). Recognition of the species’ plight through listing also promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations, because these species occur outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance

with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, our regulations provide that critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12 (h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *Latimeria chalumnae* as being entirely outside U.S. jurisdiction, so we cannot designate critical habitat for this species.

We can designate critical habitat in areas in the United States currently unoccupied by the species only if the area(s) are determined by the Secretary to be essential for the conservation of the species. The best available scientific and commercial information on the species does not indicate that U.S. waters provide any specific essential biological function for the species proposed for listing. Based on the best available information, we have not identified unoccupied area(s) in U.S. water that are essential to the conservation of the Tanzanian DPS of *Latimeria chalumnae*. Therefore, based on the available information, we will not designate critical habitat for this DPS.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires NMFS to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. Because we are finalizing a rule to list the Tanzanian DPS of the African coelacanth as threatened, no prohibitions of Section 9(a)(1) of the ESA will apply to this species.

Protective Regulations Under Section 4(d) of the ESA

We are listing the Tanzanian DPS of African coelacanth as a threatened species. In the case of threatened species, ESA section 4(d) states the Secretary shall issue such regulations as he deems necessary and advisable for the conservation of the species and authorizes the Secretary to extend the section 9(a) prohibitions to the species. We have flexibility under section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These section 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We did not receive any information from governmental agencies, the scientific community, industry, or any other interested parties on information in the status review and proposed rule pertaining to potential ESA section 4(d) protective regulations for the proposed threatened DPS, including the application, if any, of the ESA section 9 prohibitions on import, take, possession, receipt, and sale of the African coelacanth. Additionally, commercial trade, including import and export, of the African coelacanth is prohibited as a result of an Appendix I listing under the Convention on International Trade in Endangered Species of Wild Flora and Fauna. Finally, we have no evidence to suggest that the

species is at risk due to illegal trade. Any trade of the species is limited to the transfer of specimens for scientific purposes. Thus, we have determined that protective regulations pursuant to section 4(d) are not necessary for the conservation of the species at this time.

References

Whittaker, Kerry. 2014. Endangered Species Act draft status review report for the coelacanth (*Latimeria chalumnae*). Report to National Marine Fisheries Service, Office of Protected Resources. October 2014. 47 pp.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered and the basis that must be found when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir.1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216-6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

Under the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. 16 U.S.C. § 1533(b)(1)(a) (“The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .”). Therefore, the

economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required.

List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: March 23, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.201–202 also issued under 16

U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.102, amend the table in paragraph (e) by adding the entry “Coelacanth, African” in alphabetical order under the subheading “Fishes” to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
* * * * *					
Fishes					

Coelacanth, African (Tanzanian DPS)	<i>Latimeria chalumnae</i>	African coelacanth population inhabiting deep waters off the coast of Tanzania.	81 FR [Insert FR page number where the document begins], [insert date of publication]	NA	NA.

¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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